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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|--------------------------|---------------------|------------------|
| 10/705,636   | 11/10/2003  | Jesper Kristoffer Larsen | LarsenInnovCont     | 4773             |
| 33549  | 7590        | 05/07/2004               | EXAMINER            |                  |
| SANTANGELO LAW OFFICES, P.C.<br>125 SOUTH HOWES, THIRD FLOOR<br>FORT COLLINS, CO 80521 |             |                          | SMITH, KIMBERLY S   |                  |
|  |             | ART UNIT                 | PAPER NUMBER        |                  |
|  |             | 3644                     |                     |                  |

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                     |                           |
|------------------------------|-------------------------------------|---------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b>              | <b>Applicant(s)</b>       |
|                              | 10/705,636                          | LARSEN, JESPER KRISTOFFER |
|                              | <b>Examiner</b><br>Kimberly S Smith | <b>Art Unit</b><br>3644   |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 November 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-45 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/10/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: lines 7-9 should be addressed for grammatical correctness. Appropriate correction is required.

### ***Specification***

2. The disclosure is objected to because of the following informalities: insert patent number - -6,659,039- -at line 4. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it is unclear as to what is meant by "significant" at lines 9 and 11. Clarification is required.

5. Claim 16 recites the limitation "the computed feed ration" in line 1. There is insufficient antecedent basis for this limitation in the claim.

6. Regarding claims 22 and 28, it is questioned as to whether the selection of the subgroup in claims 22 and 28 is a secondary subgroup of the entire herd being selected or a subgroup of the subgroup previously selected in the method step of claim 1? Clarification is required.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3644

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 44 and 45 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the method of automatic control of breeding of free-range animals, does not reasonably provide enablement for the computer system and the program installed thereon for automatic control. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. Claims 44 and 45 are directed to an apparatus being adapted to perform the function. The scope of the specification does not provide any system requirements which would be required to perform such a method nor does it provide the code for the computer program which would perform the method. As such, one with skill in the art would not be able to use the computer system or computer program without undue experimentation.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Dell Computer Corporation website of October 7, 1997 (Dell).

Dell discloses a computer system having a computer program product being adapted to perform the method of claim 1.

***Double Patenting***

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-43 are rejected under the judicially created doctrine of double patenting over claims 1-44 of U. S. Patent No. 6,659,039 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a method for controlling breeding of free-range animals via identification, measurement and evaluation of collected data.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968).

See also MPEP § 804.

***Allowable Subject Matter***

13. Claims 1-43 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action in addition to the timely filing of a Terminal Disclaimer.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are a listing of references cited in the parent case and maintained as being pertinent to the disclosure: Aldinger (US 3,180,321), Byrne et al. (US 3,929,277), Ostler (US 4,461,240), Meister et al (US 4,463,706), Leuschner (US 4,498,424), Palmer (US 4,517,923), Kuzara (US 4,532,892), Smith (US 4,589,372), Gaalswyk (US 5,174,244), Harmsen et al. (US 5,309,864), Legrain (US 5,355,833), Hoff et al. (US 5,579,719), and Pratt (US 5,673,647). Also considered pertinent are Newly cited Crain (US 6,082,304) and Pape et al. (US 6,664,897).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

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